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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/652,548	08/31/2000	Chad J. Kugler	TER1001USD1	6553

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EXAMINER

MATTHEWS, WILLIAM H

ART UNIT	PAPER NUMBER
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3738

DATE MAILED: 07/27/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/652,548

Applicant(s)

KUGLER ET AL. 

Examiner

William H. Matthews (Howie)

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 7-24-04.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 37-43,45 and 46 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 37-43,45 and 46 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

Response to Arguments

1. Applicant's arguments filed 2-10-04 have been fully considered but they are not persuasive.

With regard to 102 rejections in view of Marcade et al, Applicant contends Marcade lacks a one piece structure wherein the structure defines a single flow channel, and further describes figure 6 as comprising a web defining two channels. The Examiner disagrees because figure 6 is described in lines 30-53 of col. 20 as a variant base member lacking a web member for use in situations not requiring iliac graft sections. Furthermore, the limitation as claimed is contained in an open-ended claim due to "comprising" and may further comprise a second single flow channel. In light of the latter, Figure 8 fully anticipates claims 37-40

With regard to the rejections of claims 37-43,45-46 under 35 U.S.C 103(a), applicant contends Marcade lacks a plurality of stent segments. The Examiner disagrees because lines 5-13 of col. 21 clearly describe a plurality of stent segments which independently support the graft sections and inherently spaced apart in order to line the length of the graft. Marcade makes no teaching or insinuation that the stent elements are directly connected. Regardless of the segments being connected, the disclosed segments of Marcade are equivalent in structure and function to the claimed stent segments.

Claim Objections

1. The objection to claim 45 have been withdrawn. Examiner notes Applicant's corrections.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. Claim 37-40 and 46 are rejected under 35 U.S.C. 102(e) as being anticipated by Marcade et al. US PN 5,993,481.

Marcade et al. discloses in figures 1-10 multiple graft system embodiments and delivery systems.

With regard to claims 37-40 figure 8 shows a single piece graft having larger ends and stents located along the entire length as an alternative to multiple piece grafts (see lines 55-57 of col. 21). Lines 5-13 of col. 21 describe replacing a single stent with multiple stent structures that independently support and therefore serve as stents and meet the structural limitations.

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With regard to newly added limitation of a "graft component defining a single flow channel", Examiner notes the claims as open-ended due to the use of "comprising" and may be interpreted to include more than a single flow channel. Therefore figure 8 meets the structural limitations because there are two single flow channels (706,762). Further, figure 6 is described in lines 30-53 of col. 20 as a variant base member lacking the web member (which creates two channels) for use in situations not requiring iliac graft sections. Therefore, the graft disclosed in figure 8 in view of lines 55-57 of col. 21 and figure 8 of Marcade anticipate the invention as claimed.

Regarding claim 46, Figures 3a-3J and 9-10 disclose a method of implanting two graft segments, each defining a single flow channel, telescopically wherein the inner portion of the delivery system has a transition element (518). Lines 5-13 of col. 21 describe replacing a single stent with multiple stent structures that independently support and therefore serve as stents.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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5. Claims 41-43,45 are rejected under 35 U.S.C. 103(a) as being unpatentable over Marcade et al. US PN 5,993,481 as applied to claims 37 and 40 above, and in further view of Fogarty et al. US PN 6,123,722.

Marcade et al. discloses in figure 8 a graft system meeting the structural limitations of claims 41-45 but lacks the express written disclosure of including a bellows region in the middle portion of the graft system. Fogarty et al. teaches in figure 7B and lines 48-55 of column 18 graft systems that may comprise bellows regions for modifying the length of the graft system.

Therefore it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the graft disclosed by Marcade et al. by including a bellows region in order to provide adjustable length to the graft as taught by Fogarty et al.

6. Claims 37-43,45-46 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fogarty et al. US PN 6,123,722 in view of Marcade et al. US PN 5,993,481.

With regard to claims 37-43 and 45-46, Fogarty et al. discloses in figure 3 a tubular graft component with first and second ends (68,70) of larger diameter than the middle portion (64), a length adjustable middle and stents in both the first and second ends. The length adjustable middle can comprise a bellows region (column 18, lines 48-55 and figure 7B). Furthermore, figure 4 shows various middle regions having independent stents located at the ends, the stents shown in detail in figures 3B and 3C.

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With regard to claim 46, Fogarty et al. discloses a catheter system (figure 2) for deploying first and second graft segments (see column 11, lines 44-50) in a telescoping manner (see figures 3-4).

Fogarty et al. fails to disclose a transition element having a tapered portion located substantially between the first and second graft portions and that the modular components of the graft system can be formed as a single piece graft. Marcade et al. teaches graft systems in figures 2,8 and lines 55 of col. 21 through line 6 of col. 22 (for single piece graft) and figures 3a-3j and 9-10 (for tapered portion) in order to eliminate the need to deliver multiple grafts and to assist implantation of the second graft, respectively.

Therefore it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the graft disclosed by Fogarty et al. by using a single piece graft and a tapered portion in order to eliminate the need to deliver multiple grafts and to assist implantation of the second graft, respectively as taught by Marcade et al.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to William H. Matthews (Howie) whose telephone number is 703-305-0316. The examiner can normally be reached on Monday-Friday 10-6:30PM.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Corrine M. McDermott can be reached on 703-308-2111.

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The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

WHM
July 23, 2004


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